Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

Comments of Xchange Telecom Corp.

Xchange Telecom respectfully submits its comments in the above-captioned proceedings pursuant to the Federal Communications Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, FCC 11-13 (Feb. 9, 2011) (the "NPRM").

I. Introduction and Background

Xchange submits comments to address the comprehensive reform proposed in the Notice of Proposed Rulemaking. Xchange Telecom is a facilities-based CLEC with both TDM and VOIP offerings. Our experience as a customer of ILECs and as an originator and terminator of facilities based traffic, as well as our experience with VOIP products has lead us to specific conclusions in terms of the telephony business model. As a company that has built a real network under the current Intercarrier Compensation ("ICC") scheme, we feel we have relevant information leading us to comment on the NPRM.

II. Intercarrier Compensation Reform

The NPRM proposes significant changes to the current ICC scheme. Some of the changes are long in coming, others are radical. However, in Xchange's view, one specific line of thought proposed in the NPRM leads to a conclusion that suggests radical change in the ICC scheme. For reasons outlined below, we believe that another approach is proper.

The NPRM constantly makes the point that current rules "actually *disincentivize* . . . the transition from analog circuit-switched networks to IP networks." NPRM ¶6, at 3 (emphasis in original); *see also*,¶ 608 . This assertion is made because of the fact that current carriers retain their TDM systems in order to get compensated. The assertion is also made that if only the carriers would move away from a minutes-based compensation scheme, there would be no incentive to retain older technologies.

This jump misses a crucial aspect of the equation. It is true that carriers retain TDM in order to get paid, however, it is also true that carriers avoid IP because of a fear that they will not get paid. This is because of the murkiness in the compensation due from VOIP providers. Had the Commission ruled in the past that VOIP was subject to access charges or reciprocal compensation, carriers could have made the cost-benefits analysis necessary to decide whether to move to all-IP. It is because of the lack of clarity that carriers avoid all-IP.

Indeed, Sprint makes this very point in their comments cited by the Commission in footnote 729.

> The current ICC system harms broadband deployment and the move to IP-based systems because ILECs are incented to either build inefficient networks that separate TDM voice capabilities from newer IP-based systems or they simply refuse to upgrade to IP-based systems . . . . ILECs recognize that the lower costs of IP-based systems could undermine their current TDM-based access

> revenue stream *as disputes over payment of access charges on VoIP traffic demonstrate*.
>
> For example, a VoIP provider originates voice traffic in IP. But ILECs almost always require the conversion of this IP traffic to TDM before they receive it, or otherwise they would not allow such traffic to be terminated to their customers.
>
> . . .
>
> There are only two reasons, both unjustified in this age of IP where ILECs have depreciated their TDM networks, in refusing to provide competitive IP/IP interconnection: 1) to raise the competitor's cost by forcing them to utilize a redundant TDM conversion platform and 2) to facilitate the collection of bloated switched access charges.

See Sprint Nextel Comments *in re* NBP PN #25 at 7-10 (filed Dec. 22, 2009) (emphasis in original). In other words, the refusal to provide IP interconnectivity would be solved if the Commission would make it clear that both TDM and VOIP traffic are to be treated, and compensated, the same. This point is recognized by the Commission in ¶ 608 of the NPRM. The fact that this is not the case is why the ICC system ends up encouraging carriers to stick with TDM.

VOIP providers assert that they owe no compensation at all. NPRM ¶ 610. Several providers advertise below cost (when including even minimal access rates) phone service solely because they do not intend to ever compensate, at any rate, the terminating carriers. *Id*.

While it is true that moving away from a minutes-based compensation scheme will incentivize all-IP traffic, it is akin to throwing away the baby with the bathwater. The Commission should first fix the problem – the lack of clarity in VOIP access billing rates – and then reexamine to see if there is a need for a better structure for ICC. This approach would be consistent with the Commission's position in NPRM ¶ 12, acknowledging the benefits of measured transitions.

The Case for a Unified Interstate Rate

A unified interstate rate would recognize the fact that technology has changed. Longer distances between the states vanish in a system where most of the interstate traffic is IP transited. In most situations, regardless of technology used, the cost to transit a call from one state to the other is fixed. The few jurisdictions that have higher rates are the ones that are actually causing the problems. A unified rate, averaging the cost of a call over the entire country, would adequately compensate most legitimate calls. To the extent that there are states where costs are higher, the carriers in those states ought to look towards CAF to offset such costs.

Creating a unified interstate rate will give the FCC the ability to control traffic stimulation. Carriers will no longer have an incentive to partner with traffic stimulators in states that have traditionally had high interstate termination rates. To the extent that a rural LEC requires further support, it can look towards the CAF.

A unified interstate rate would also provide a benchmark for states to cap their intrastate access rates. The industry would be better served by clarity on the rate for VOIP than by a new scheme for compensation of VOIP. Moreover, any order that would create a new rate for VOIP that is less than the TDM rate would further encourage carriers to retain old technologies. The best plan would be for the FCC to create a unified interstate rate, low enough to reflect the inherent savings in an IP based network, but high enough to ensure that carriers are compensated for the use of the network.

The Problem with Other Solutions to ICC

Part of the issue with the Commission's solution is that while historically, the ICC system may have arisen to solve a universal service problem, *see* NPRM ¶ 495, it has evolved past that. It is a crucial part of the compensation scheme for use of the network. The FCC dismisses this point

by stating that there is benefit to both the caller and the receiver of a telephone call. NPRM ¶ 525. Although this assertion is dubious, (as anyone who has received a call from a telemarketer, bill collector or mother-in-law would agree), even taken at its face value, it does not mean that the parties to a call should not compensate each-other. Although the time may have come to remove the universal service aspect , again, we must not throw the baby out with the bathwater. It is more efficient, as the FCC suggests, *see* NPRM ¶ 43, to remove the universal compensation aspect of ICC and focus ICC on intercarrier compensation. There are better solutions that will solve the problems, like a unified interstate rate, based on the cost of providing service using the Faulhaber methodology previously outlined by the Commission. NPRM n.729.

Secondly, the other alternative, Bill-and-Keep, tends to reward networks that have lower total costs. Inefficiencies are thus punished. *See generally, In Re Developing a Unified Intercarrier Comp. Regime*, 16 F.C.C.R. 9610, 9624-26 (2001). However, this is only beneficial where the inefficiencies are internally imposed. If the inefficiencies are there because of regulation, then to punish the carrier that suffers from the inefficiencies is patently unfair. In the case of ICC, where a CLEC must purchase, at overstated tariffed rates, elements of the underlying ILEC network, if it has to absorb these costs due to Bill-and-Keep, it is being unfairly punished because of the ILECs inefficiency. It cannot change its underlying cost, nor make it more efficient. Thus, its cost is inherently higher. ICC allows CLECs to fairly recoup its costs by sharing the cost evenly with the originating carrier.

Lastly, changing the ICC from per minute intercarrier compensation, as suggested in NPRM ¶ 527 and 532, will hurt the consumer. Per-minute compensation also serves to ensure the quality of the call remains constant. If an IXC would only pay based on bandwidth, it would have the incentive to compress as many calls as possible into its bandwidth available. This, in turn, would

decrease call quality. Because this is being done by the middle-man, the IXC, the originating and terminating carriers would get the blame, without ability to fundamentally change the paradigm. However, where the carriers are compensated based on MOUs, the carrier will have no incentive to decrease the bandwidth or call quality.

Ensuring that any Fundamental Changes are Prospective

Whatever scheme the Commission does adopt, any change to the scheme must be prospective only. This would be consistent with the FCC's position in NPRM ¶ 12, to avoid disruption. Moreover, as pointed out by the S.D.N.Y. in *Manhattan Telecommunications Corp. v. Global NAPS, Inc.*, 08 CIV. 3829 (JSR), 2010 WL 1326095 (S.D.N.Y. Mar. 31, 2010) *reconsideration denied*, 08 CIV 3829 JSR, 2010 WL 2976498 (S.D.N.Y. July 12, 2010), it is clear that VOIP providers are required to pay *something*. Any rate that is different than the TDM rate will not encourage terminating-carrier efficiencies, it will only punish them for being late in the game in changing – for delaying changes to IP until the FCC ruled on the status of IP. The same could be said of Bill-and-Keep, suggested in ¶ 615 of the NPRM.. A better solution would be to create a consistent rule that regardless of the type of traffic, any interstate minute pays the same rate.

It is also worth noting that the oft-quoted ISP bound traffic rate of .0007, *see* NPRM ¶ 616, is wholly inapplicable to VOIP termination. In the case of ISP bound traffic, the traffic goes from the caller to the carrier to the ISP's carrier (who would normally be compensated at the inter/intrastate rates) who then hands off the traffic, often in the switch itself, to the ISP. In comparison, VOIP traffic starts with a VOIP carrier (who has little or no cost to create such traffic, as there are no last-mile network costs) and is sent to the terminating carrier who has to then deliver traffic to a TDM based end-user, through a POTS network. The terminating carrier

bears all the cost. Thus, the .007 rate allotted for ISP-bound traffic is irrelevant – the terminating carrier has no cost savings because the originating carrier happens to be a VOIP provider.

Conclusion

Thus, the fairest solution that would provide a comprehensive scheme for ICC in the near future is to adopt a standard, across-the-board rate for interstate access, reflecting the average cost of sending traffic through the current hybrid network. Such a rate will discourage traffic pumping schemes, because the excessive interstate rates would be abolished. It will discourage phantom traffic because there will be no incentive to hide the source of the traffic. It will encourage investment in IP based solutions, as there are no longer incentives in keeping TDM and the efficiencies of IP will encourage carriers to move to IP. And such a unified rate will help clarify the picture for the future, by eliminating technology tiered based compensation that exists currently with the lack of clarity in VoIP's status.

III. Connect America Fund

Xchange submits the following comments to sections IV and V to the NPRM.

In ¶ 71, the FCC suggests that it could require recipients of support to offer broadband services. The FCC should ensure that any such order should allow customers the choice of refusing broadband.

In ¶98, the FCC sought comment on whether partnering should be sufficient to satisfy the facilities requirement. The FCC should consider that many CLECs today only offer broadband via partnering arrangements or resale arrangements with the ILEC.

In ¶ 104, the FCC seeks comment on what standards should govern speed for broadband. Identical standards ought to govern wireless and wireline, fixed and mobile, services. The

reason is that this is a minimum standard- the minimum bandwidth to be considered broadband. Creating separate thresholds will only serve to encourage carrier complacency and discourage customers from adopting new services. The technology is clearly there, with minimal investment, for all wireless carriers to provide broadband at least equal to wireline carriers. Verizon, for example, has launched LTE with speeds in excess of 12 Mbps down and 5Mbps up. *See, e.g.,* Verizon Launches 4G LTE in 38 Major Metropolitan Areas by The End Of The Year, http://news.vzw.com/news/2010/10/pr2010-10-01c.html (last visited Mar. 31, 2011). This speed will likely deteriorate as new customers join these networks unless the wireless providers have a minimum standard that they must keep to. Moreover, it is disingenuous for the wireless industry to argue that they are a legitimate proxy for customers' telephony and internet choices if they are held to a lesser standard. Accordingly, it is Xchange's position that customers are best served by a unified standard of broadband.

Respectfully Submitted,
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